

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

L-3 COMMUNICATIONS SYSTEMS-WEST

Employer

and

Case No. 31-RC-8538

TEAMSTERS UNION LOCAL 381

Petitioner

DECISION AND DIRECTION OF ELECTION

Teamsters Union Local 381 (“the Petitioner”), is the Section 9(a) representative of a unit of technicians employed by the Employer at Vandenberg Air Force Base (“the Unit”).¹ The unit employees are covered by a collective bargaining agreement entered into by the Petitioner and the Employer. The Petitioner filed the petition in this case under Section 9(c) of the National Labor Relations Act, as amended (“the Act”), seeking to represent Systems Mainte-

¹ The Unit consists of the following employees:

Included: All full-time and regular part-time Associate Electromechanical Technicians; Electro-Mechanical technicians; Senior Electronic Technicians; Associate Electro Mechanical Technicians; Electronic Technicians; Technical Specialists; Senior Optical Technicians; and Optical Technicians employed by the Employer at Vandenberg Air Force Base, California.

Excluded: All analysts; technical writers; administrative assistants; engineering aides; draftsmen a, b, and c; illustrators; guards; professional employees; group leaders; foremen; office clerical employees; and all other employees guards and supervisors as defined in the Act, as amended.

nance Engineers (“SMEs”)² employed by the Employer.³ The Petitioner seeks a self-determination election to allow the SMEs to vote on whether they desire to be represented by the Petitioner as a part of the existing unit; the Petitioner does not desire to represent the SMEs in a separate unit.⁴

The Employer asserts that a self-determination election for the SMEs would not be appropriate because the SMEs are supervisors and because they do not share a community of interest with the unit employees. For the reasons set forth below, I conclude that the SMEs are not supervisors within the meaning of Section 2(11) of the Act and that they do share a community of interest with the existing unit. Accordingly, I conclude that a self-determination election is appropriate.

I. FINDINGS

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

A. Hearing Officer Rulings: The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. Jurisdiction: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.⁵

² The SMEs are sometimes referred to in the record as Senior Support Engineers and sometimes referred to as Depot Team Leaders.

³ No collective bargaining agreement covers the petitioned-for employees.

⁴ There is no history of collective bargaining among the SMEs and no other labor organization seeks to represent them.

⁵ The Employer, L-3 Communications Systems-West, a division of L-3 Communications, a Delaware Corporation, is engaged in providing technical

C. Labor Organization: Petitioner is a labor organization within the meaning of Section 2(5) of the Act, as amended, and claims to represent certain employees of the Employer.

D. Question Concerning Representation: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

E. Appropriate Voting Group: The following employees of the Employer constitute a voting group who may vote whether they wish to be represented by the Petitioner in the existing unit:

All full time and regular part time System Maintenance Engineers employed by the Employer at Vandenberg Air Force Base, California, excluding all other employees, guards and supervisors as defined in the Act.

II. OVERVIEW

The Employer performs Level 2 maintenance and repair work for the range support system at Vandenberg Air Force Base. The Employer is a subcontractor on the Space Lift Range Systems Contract (“SLRSC”); ITT is the prime contractor on the SLRSC. The Employer’s work is interrelated with the

services for the United States Air Force and other contractors that operate out of Vandenberg Air Force Base, California. During the past 12 months, a representative period, the Employer purchased and received at its facility in California goods, supplies, and materials valued in excess of \$50,000 directly from suppliers located outside the State of California. The Employer, thus, satisfies the Board’s statutory jurisdictional standard, as well as the Board’s discretionary standard for asserting jurisdiction over non-retail enterprises. *Siemons Mailing Service*, 122 NLRB 81 (1959).

work of other contractors and sub-contractors, and representatives of ITT are in the same chains of command as the Employer's supervisors and managers. For example, the Employer's Depot Electronics Supervisor, who supervises three of the Employer's SMEs, reports to the Depot Manager, who is employed by ITT, who in turn reports to a manager employed by the Employer.

The Unit employees and the SMEs employed by the Employer perform services at Vandenberg Air Force Base in California and at other remote locations. The Employer employs 4 SMEs and 34 Unit employees at Vandenberg Air Force Base. Three of the SMEs are assigned to the electronics area and the other SME works in the optics area. The SME assigned to the optics area works out of the Optics Building; the other three SMEs work out of the building referred to as the 9320 Building. The Unit employees are assigned to the electro mechanical shop, the electronics shop, or the optics shop. Two of the Unit employees work in the Optics Building and all, or virtually all, of the remaining Unit employees work out of the 9320 Building. The Optics Building is about one-half mile away from the 9320 Building. The Depot Electronics Supervisor is responsible for the electronic shop area and there is a supervisor employed by the Employer in charge of the electro mechanical shop. The person in charge of the optics area is employed by ITT.⁶

The SMEs work on three types of assignments: Program Depot Maintenance ("PDM"); Unscheduled Depot Level Maintenance (UDLM); and Emergency Depot Level Maintenance (EDLM). The work is performed on equipment at various remote sites that are located from a couple of miles from Vandenberg to 3½ hours away. The PDM projects can last from two weeks to a month; the

UDLMs generally last from a day to a month; and the EDLMs are completed more expeditiously.

The PDM assignments involve the regularly scheduled maintenance of equipment. There is a detailed checklist with respect to each regularly scheduled maintenance service. SMEs may assist in developing the checklist. When given a PDM assignment, the SME checks the manuals to determine what parts will be needed for the maintenance work, and orders the parts. The SME assembles a checklist and develops the maintenance plan technical criteria for the inspection and maintenance work. The Desk Guide for Programmed Depot Maintenance, however, provides that the SME must review the PDM plan and technical criteria with the SME's supervisor.⁷ The Depot Electronics Supervisor assigns Unit technicians to work with the SME on the project. The SME may request that the Supervisor assign particular Unit technicians to the project based upon their experience with the particular equipment, or the Supervisor may assign whoever is available. The SME works with the Site Supervisor⁸ at the equipment site to determine whether there are any problems that need to be addressed other than what is on the checklist. The checklist provides a detailed guide to follow in performing the PDM inspection and corrective maintenance. The SMEs assign technicians to work on specific tasks identified on the checklist and they provide technical direction to the crew. The SME observes the

⁶ It is unclear from the record whether this individual employed by ITT supervises the Unit employees and/or the SME assigned to the optics area.

⁷ The record refers to the Depot Electronics Supervisor, the Depot Supervisor, and the SMEs' Supervisor. It is not clear whether these references are to the same individual.

⁸ The Site Supervisor is not an employee of the Employer.

work to be sure that everything on the checklist is being completed. While working on PDMs, the SMEs are required to climb over and around the antennas, service ladders, etc. to perform an in-depth inspection for each item listed on the checklist, and they are required to update a hard-copy checklist on a daily basis. The SME is responsible for completing the requisite paperwork. Technicians work with the SME in completing the final paperwork in that a technician may take readings that he relates to the SME, who records the data. According to the Desk Guide, the SMEs' supervisor directs and supervises the SMEs during all planning, deployment, PDM task work, and the submission of required documentation.

With respect to the UDLM projects, the Depot Electronics Supervisor⁹ receives a request from the Government Interface Office for repair work that had not previously been scheduled as part of the regular maintenance program. The Depot Electronics Supervisor assigns the project to the appropriate SME; each SME has a particular expertise. The SME interacts with the Site Supervisor, either by phone or in person, to determine what needs to be done. The SME evaluates the problem and determines an estimate of the number of man-hours required to complete the repair, the cost of the repair, and an estimate of the time the repair will take to complete. The SME completes a UDLM Response Form that goes through the supervisor and then to the Government Interface Officer for approval. After the repair work is approved, the Depot Electronics Supervisor assigns unit employees to work on the project. The SME may

⁹ It is unclear whether all of these requests go through the Depot Electronics Supervisor or whether some of the requests may go through supervisors of other departments, such as the supervisor of the electromechanical department.

request that particular technicians be assigned to work on the project based upon their skills or experience with particular equipment. EDLM projects are more urgent and must be completed as soon as possible. SMEs do not, therefore, complete the response forms for EDLMs; they start the repair as soon as they can.

When out at the location where the repair or maintenance work is being performed, the SME is responsible for the health and safety of the employees at that location. In addition, the SME provides technical direction to the Unit employees performing the work and assigns the Unit employees to the particular tasks that they are to perform. In the capacity of the “quality representative” at the site, the SME goes through a checklist for each project. The SME works with the Site Supervisor in confirming that the work has been properly performed and the SME places a quality representative stamp on paperwork indicating that the repair/maintenance work has been properly completed.

III. ANALYSIS AND CONCLUSIONS

A. Self-Determination Elections

The Board has found self-determination elections appropriate in circumstances where an incumbent union seeks to add a previously unrepresented group of employees to its existing unit and where no other labor organization seeks to represent the unrepresented employees. In this situation, if a majority of petitioned-for employees votes for representation, this result is taken to indicate their desire to be made part of the existing unit. *Warner-Lambert Co.*, 298 NLRB 993, 996 (1990). A self-determination election in which the voting group is asked to choose only between representation in the current unit or for no representation is appropriate. *Carr-Gottstein Food Co.*, 307 NLRB 1318, 1319 (1992).

B. The SMEs Are Not Supervisory Employees

The Employer contends that the SMEs are supervisors under Section 2(11) of the Act. The Board recognizes that it must not construe supervisory status too broadly because the employees who are deemed to be supervisors are denied rights provided to employees in the Act. *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1995). Accordingly, the party asserting supervisory status carries the burden of proving supervisory status. *Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001). An employee acting as a supervisor is considered to be a supervisor within the meaning of the Act “only if the individual’s exercise of supervisory authority is both regular and substantial.” *Hexacomb Corporation*, 313 NLRB 983, 984 (1994).

Section 2(11) of the Act defines the term supervisor as follows:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The parties stipulated that the SMEs do not have the authority to hire, discharge, layoff, recall, or promote employees and that they do not have the authority to suspend employees without pay or to grant them wage increases. There is no evidence that the SMEs have the authority to effectively recommend these actions. Moreover, there is no evidence that the SMEs have the authority to transfer or reward employees or to effectively recommend the transfer or reward of an employee, and, the record fails to establish that the SMEs can adjust employee grievances. The Employer asserts that the SMEs have the authority to responsibly direct, assign and discipline unit employees, and are therefore supervisors.

As the Employer notes, there is no other representative of the Employer of higher authority than the SME regularly at the worksites where the PDMs, UDLMs and EDLMs are being performed.¹⁰ The SMEs are responsible for ensuring that the employees observe safety regulations and properly perform their work. Nevertheless, one SME testified that he refers back to his supervisor on a daily basis from the worksite and that the supervisor may direct him that something should be done differently.

¹⁰ The Depot Electronics Supervisor does go to these remote sites to assist if there is a technical problem.

The SMEs assign Unit employees to particular tasks at the work sites and they provide technical direction and training when necessary. With respect to assignments, an SME testified that since the Unit employees perform certain tasks each month they generally know what to do and usually “it just works out” so that if one employee is doing one task, the other employee will just know to start the next task. The record fails to establish the decision making process of SMEs in assigning work. Thus, there is no evidence either that the SMEs consider the individual skills of employees in assigning them to particular tasks, or that the SMEs are required to assign tasks that differ significantly in difficulty or desirability.

With respect to direction of work, an SME testified that technicians do not need much direction when performing tasks that they perform on a regular basis and, especially with respect to the PDMs, there are clearly established procedures and guidelines for the work that is being performed. The Employer emphasizes that the Desk Guide specifies that the SMEs provide technical direction to the depot crew. I note, however, that the Job Posting for the position of Senior Electronic Technician, a Unit position, similarly provides that the Senior Electronic Technician “provides technical direction to lower level personnel.”

I conclude that the Employer has failed to meet its burden of establishing that the SMEs exercise the requisite independent judgment in assigning and directing employees. See, *Brad Snodgrass, Inc.*, 338 NLRB 917, 918 (2003) (where the Board affirmed the Decision of an Administrative Law Judge (“ALJ”) who had concluded that a foreman, who was in charge of a jobsite and directed the employees’ work and determined their assignments, was not a statutory supervisor because there was minimal evidence about his decision

making process in assigning work and insufficient evidence that he exercised independent judgment. The ALJ noted that although the foreman might exercise sufficient independent judgment to be a statutory supervisor, the party with the burden of proof failed to prove that was the case in that proceeding.) See also, *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995) (where the Board noted that the record did not reveal the “particular acts and judgments that make up [the alleged] direction of work.”)

The SMEs do serve a quality assurance function by verifying that the work is properly performed. and placing a quality stamp on the appropriate form. In doing so, the SMEs use detailed checklists. The Board does not find employees to be supervisors based solely upon their function as quality control employees in inspecting work of others. See, *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988) (where the Board declined to find employees who inspected the work of others to be supervisors where they did not have the authority to effectuate personnel decisions, such as discipline or reward of employees for the quality of their work.)¹¹ In fact, the Board generally includes quality control employees in production and maintenance units when a union has requested their inclusion. *Lundy Packing*, 314 NLRB 1042, 1043 (1994).

With respect to discipline, the Employer provided an example of a situation where an employee left the worksite for a dental appointment, notwithstanding that the SME at the site had told him not to leave since his departure would leave them in violation of a safety regulation. On that occasion, at the

¹¹ Although the Employer states in its brief that the SMEs are accountable for the work product at the site, the record does not establish how or the extent to which they would be held accountable. The transcript cite provided by the Employer to support this statement refers to testimony that does not reference SMEs being held accountable.

request of the Depot Electronics Supervisor, the SME wrote a report of the incident. The SME, however, made no recommendation with respect to disciplinary action.

The SMEs do have the authority to send an employee back to the shop if there is a problem with the employee, but at that point, the Depot Electronics Supervisor or another supervisor or manager would handle the situation, or the SME would call a manager out to the site to observe the situation and resolve the problem. As the Depot Electronics Supervisor explained, when an SME informs him of an employee problem, he (the Depot Electronics Supervisor) calls the employee in to discuss the situation in an attempt to resolve the problem. If the Depot Electronics Supervisor were unable to resolve the problem, he would document the situation and bring the matter to the attention of his manager. Thus, although the SMEs are expected to report safety violations and other employee problems to the appropriate supervisor or manager, there is no evidence that the SMEs have authority to impose discipline or to effectively recommend that a disciplinary action be taken. With respect to discipline, the SMEs perform, at most, a reporting function that does not constitute the exercise of supervisory authority under the Act. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995). An SME can stop all work at the site if there is a safety issue,¹² but, in that circumstance, the SME would then consult with a supervisor about further action.

¹² Although it is clear that the SME has the authority to shut down the work site if there were a significant safety issue, the only examples in the record of safety incidents were the incident described above when the unauthorized departure of an employee created a violation of a requirement that two trained rescue climbers be present and another incident when the Depot Electronics Supervisor called the SME to shut down a site after the Supervisor was alerted of lightening in the area.

The Employer also alleges that the SMEs are supervisors because at least one of the SMEs is designated to act as the Depot Electronics Supervisor in his absence. This SME has been designated to act as the Depot Electronics Supervisor about ten times in the last year, usually for short periods of time.¹³ The record contains several e-mail memos delegating authority to the SME on occasions when the Depot Electronics Supervisor was on vacation for either one or two days at a time. Each of these memos provides the home phone number of the Depot Electronics Supervisor for use in emergencies. There is no evidence that the SME exercised any of the supervisory authorities enumerated in Section 2(11) while acting for the Depot Electronics Supervisor.¹⁴ In fact, the SME to whom the authority was delegated testified that if there were a disciplinary situation when he was acting as the Depot Electronics Supervisor, he would take the matter to the Manager.

The Board will only deem an employee who substitutes for a supervisor to be a statutory supervisor if the employee's "exercise of supervisory authority is both regular and substantial." *Hexacomb Corp.*, 313 NLRB 983, 984 (1994). Here, the record fails to establish that the SMEs actually exercise supervisory authority within the meaning of Section 2(11) of the Act on those occasions when they are designated to serve as an acting supervisor. Moreover, even if the SMEs did exercise supervisory authority when designated to serve as an acting supervisor, I would not find them to be statutory supervisors because, as the Board noted in *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1194

¹³ The SME served as Acting Depot Electronics Supervisor for periods of one or two days at a time and, only once, for a period of one week.

¹⁴ Although the SME to whom the authority was delegated has permitted employees to leave early while he was acting for the Depot Electronics Supervisor, the record does not detail the circumstances.

(1994), “[t]he sporadic assumption of supervisory duties is not sufficient to establish supervisory authority.” Indeed, the Board has found that where an employee spent between 15 and 20% of his time in a supervisory capacity, the employee would be not excluded from a bargaining unit on the presumption that he is a supervisor. *Gaines Electric Co.*, 309 NLRB 1077 (1992). I conclude that the fact that on occasions, for brief periods of time, SMEs may be designated as an acting supervisor does not render them supervisors within the meaning of the Act.

The Employer further alleges that the SMEs are supervisors because they are paid a salary, work different hours, are eligible for different benefits, participate in a performance evaluation program, and are provided with separate offices. These factors, however, are insufficient to establish that the SMEs are supervisors.

In light of the foregoing, I conclude that the Employer has failed to meet its burden of establishing that the SMEs are supervisors within the meaning of the Act.

C. The SMEs Share a Community of Interest with the Unit Employees

In determining whether to group various employees in a bargaining unit, the Board looks to see if there is a community of interest among the categories of employees. *Global Marine, Inc.*, 214 NLRB 192, 198 (1974). The factors considered by the Board include: (1) desires of the parties; (2) history of bargaining; (3) similarity of skills and job functions; (4) common supervision; (5) contact or interchange with other employees; (6) similarity of working conditions; (7) type of industry; (8) organization of plant; (9) whether the employees

work in separate areas; and (10) whether any union seeks to represent the employees separately. *Id.* at 198-99, citing *Sheffield Corp.*, 134 NLRB 1101, 1103-04 (1961).

As noted above, the Petitioner seeks to include the SMEs in the Unit and the Employer alleges that it would be inappropriate to include them in the Unit because they do not share a community of interest with the Unit employees. There is no history of bargaining with respect to the SMEs and no union seeks to represent the SMEs separately.

The SMEs and the Unit employees possess technical skills. The SMEs, however, have a broader scope of knowledge and the SMEs usually do not perform the physical repair/maintenance tasks.¹⁵ Rather, they help prepare for the work, provide direction to the Unit employees, and ensure that the work is properly completed. The collective bargaining agreement currently precludes the SMEs from actually performing unit work because they are not in the bargaining Unit.¹⁶ Although the record does not reveal the degree to which the SMEs and Unit employees have had similar training, it is evident that they have had some amount of similar training. For example, in testifying about climbing safety, the Depot Electronics Supervisor testified, “the technicians have been trained in the exact same training the SMEs have.” The SMEs are required to have a “B.S. Degree or equivalent education/experience.” In addition, they are

¹⁵ There are some physical tasks that both SMEs and unit employees perform, such shutting off power by switching breakers. Also, the SMEs are expected to climb antennas to perform in-depth inspections.

¹⁶ The Collective Bargaining Agreement provides in Article VI that “[e]mployees outside the Bargaining Unit shall not perform work normally or regularly performed by Bargaining Unit employees, except for purposes of instruction, testing, development, and integration of new or modified equipment or programs, systems failure and emergency situation.”

required to have five years of directly related experience. Unit employees also are required to have a post-secondary school degree or similar experience. Senior Electronic Technicians (who are in the bargaining unit) are required to have an “A.S. Degree in Electronic Technology or two years of technical school or equivalent military experience.” In addition, these Unit employees are required to have four years of applicable experience.

There is some evidence of common supervision between Unit employees and SMEs. For example, the Depot Electronics Supervisor supervises three of the SMEs, as well as Unit employees who are assigned to the depot electronics shop.

With respect to interchange, there is no evidence that unit employees perform the functions of the SMEs and the collective bargaining agreement precludes the SMEs from performing unit work. It does appear, however, that two of the four current SMEs previously held positions that are in the bargaining unit.¹⁷ Moreover, there is significant contact between SMEs and Unit employees who work side by side with the SMEs at the remote locations and who drive together to those sites. In addition, the SMEs and Unit employees attend the same morning meetings with the Depot Electronics Supervisor. An SME estimated that he spends about 60% of his time interfacing with Unit employees. Although the SMEs have their own cubicles, and the Unit employees are assigned to work benches in common areas, the SMEs and Unit employees do work in the same buildings. The SMEs in the 9320 Building have offices

¹⁷ It appears from one of the Employee Development Reviews for SME Patrick Soltan that he had been hired as an Electronics Technician (a unit position) and later was promoted to the position of SME. Similarly, SME Peter Becton was a technician at Vandenberg before becoming an SME, although at that time he worked for a previous contractor.

near the area where the technicians have their workbenches, and the SMEs and Unit employees share the same parking area.

The SMEs, as well as the Unit employees, record their time through the Employer's website. The SMEs are paid in a different manner from the Unit employees. The SMEs, who are considered to be "exempt" employees, are paid a salary and the Unit employees, who are considered to be "non-exempt" employees, are paid on an hourly basis. In addition, Unit employees and SMEs receive different benefits. The SMEs, unlike the Unit employees, are eligible to participate in the benefit programs offered to other "exempt" employees. They, therefore, are eligible to participate in different pension, disability, and health plans and they are subject to a different policy with respect to the number of vacation and sick days that they receive.

I conclude that the SMEs and the Unit employees, all of whom possess technical skills, work side by side at remote locations, share common supervision, and work in the same general areas, share a community of interest. I do not find that the fact the SMEs and the Unit employees are paid in a different manner and receive different benefits to negate their community of interest with each other. *MJM Studios*, 336 NLRB 1255, 1257 (2001). Rather, I find that the SMEs share a sufficient community of interest with the Unit employees to warrant their inclusion in the same unit.

V. CONCLUSION

In light of the foregoing, I shall order a self-determination election among the SMEs. The Petitioner has declined to participate in an election concerning representation of the SMEs in a separate unit, and no other union seeks to represent the SMEs separately. Therefore, inasmuch as the Board will not

force a labor organization to assume the representation of employees in a unit when the labor organization has declined to do so, the SMEs will not be asked whether they prefer representation in a separate unit. *Carr-Gottstein*, 307 NLRB *supra* at 1319

If a majority of employees in the voting group casts ballots in favor of the Petitioner, the employees will be taken to have indicated their desire to be included in the Unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that Unit. If a majority of valid votes is not cast for representation, the votes will be taken to have indicated the employees' desire to remain unrepresented.

Those in the voting group include:

All full time and regular part time System Maintenance Engineers employed by the Employer at Vandenberg Air Force Base, California, excluding all other employees, guards and supervisors as defined in the Act.

The question on the ballot will be whether they desire representation by the Petitioner as part of the existing Unit or whether they desire no representation. Should a majority vote in favor of representation, I find the following to constitute an appropriate unit for purposes of collective bargaining:

Included: All full-time and regular part-time Associate Electromechanical Technicians; Electro-Mechanical technicians; Senior Electronic Technicians; Associate Electro Mechanical Technicians; Electronic Technicians; Technical Specialists; Senior Optical Technicians; Optical Technicians; and System Maintenance Engineers employed by the Employer at Vandenberg Air Force Base, California.

Excluded: All analysts; technical writers; administrative assistants; engineering aides; draftsmen a, b, and c; illustrators; guards; professional employees; group leaders; foremen; office clerical employees; and all other employees guards and supervisors as defined in the Act, as amended.

There are approximately 4 employees in the voting group and approximately 38 employees in the above-described appropriate Unit.

DIRECTION OF ELECTION¹⁸

I shall conduct an election by secret ballot among the employees in the voting group found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.

ELIGIBLE TO VOTE: Those in the voting group who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, are eligible to vote. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls.

INELIGIBLE TO VOTE: Employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that commenced more than 12 months before the election date and who have been permanently replaced are ineligible to vote.

¹⁸ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Teamsters Union Local 381 as part of the existing Unit or whether they desire no representation.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that the Employer must file an election eligibility list, containing the FULL names and addresses of all the eligible voters, with me within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election only after I have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before, September 20, 2005. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total

of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

A request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, under the provision of Section 102.67 of the Board's Rules and Regulations. The Board in Washington must receive this request by September 27, 2005.¹⁹

DATED at Los Angeles, California this 13th day of September, 2005.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31

¹⁹/ In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.